IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2024 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALEX PACKAGING INDUSTRIES THR'ITS PARTNER ATUL A.MEHTA - Petitioner(s)

Versus

DY.ENGINEER (O & M) - Respondent(s)

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Appearance :
MR BM VAISHNAV for Petitioner(s) : 1,
None for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/02/2006

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the revised

supplementary bill issued by the respondent Electricity Company as well as the order passed by the Appellate Committee of the Urja Vikas Nigam Ltd dated 20.9.2005 in partly allowing the said appeal and reducing the original supplementary bill to the extent of Rs.5,27,970.96 ps.

2. The petitioner is the consumer of the respondent Electricity Company with the contract load 65 HP. The electrical meter was checked by the Junior Engineer I/c. Squad, Rajkot on 11.7.2003 and at that time it was found that total connected load was at 66.63 H.P. And it was also found that MMB seal was found refitted and wire of the load side of R-Phase CT was also found separated and one end of neutral was given in terminal block and the same was found cut. At that time it was also found that display of the meter was also not available. The checking authority therefore came to the conclusion that the petitioner dishonestly abstracted electrical energy and checking sheet was prepared pointing out which was found at the time of checking. Considering the case as that of malpractice, the electricity supply of the

petitioner was disconnected on that very day itself on 11.7.2003 and MMB along with meter and MMB seal were removed, wrapped and sealed and were sent to the laboratory for its further inspection. The checking sheet was signed by the representative of the petitioner without any protest. Thereafter, necessary inspection was carried out in the laboratory on 7.9.2005 in the presence of the representative of the petitioner and laboratory inspection report was prepared and it was also signed by the representative of the petitioner without any protest. The petitioner came to be booked for theft of electric energy and a supplementary bill for an amount of Rs.11,54,568.78 ps was issued to the petitioner which came to be challenged by the petitioner before the Appellate Committee and the Appellate Committee partly allowed the said appeal by reducing the chargeable days from 181 days to 152 days and reduced the load factor and diversity factor i.e. C/B at 0.3. The resultant effect is that the original supplementary bill for an amount of Rs.11,54,568.78 ps came to be reduced considerably to the extent of Rs.5,27,970.96 ps. Being aggrieved and dissatisfied with the order

passed by the Appellate Committee dated 21.10.2005, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri B.M.Vaishnav, learned advocate appearing on behalf of the petitioner has vehemently submitted that the petitioner has not committed any malpractice and it is the contention on behalf of the petitioner that even earlier also the meter was found to have been running slow and it was the duty of the authority to remove and/or replace the meter and therefore, it is requested to allow the present special civil application.

4. It is required to be noted that so far as the present case is concerned, the same is based upon the checking carried out by In-charge Squad on 11.7.2003 and at the time of checking it was found that the MMB Seal was refitted and the wire of the load side of R-Phase CT was found separated and one end of neutral was given in terminal block and it was found cut and that display of the meter was also not

available. It is also required to be noted that the aforesaid irregularities were noted in the checking sheet and the checking sheet came to be signed by the representative of the petitioner without any protest. It is also further required to be noted that meter and MMB Seal were removed, wrapped and sealed and were sent to the laboratory for its further inspection and necessary inspection at laboratory was carried out on 7.9.2005 in the presence of the representative of the petitioner and even in the laboratory report it was found that what was found at the time of checking came to be confirmed and laboratory inspection report was prepared and the same was also signed by the representative of the petitioner without any protest. Therefore, it can not be said that there is no malpractice committed by the petitioner. The appellate committee after appreciating the evidence and considering submissions made on behalf of the petitioner partly allowed the appeal reducing the supplementary bill from Rs.11,54,568.78 to Rs.5,27,970.96 ps and the bill came to be considerably reduced. Therefore, the order passed by the appellate is based upon appreciation of

evidence and this Court is not sitting as an appellate authority against the order passed by the appellate authority while exercising the powers under Article 226 and 227 of the Constitution of India. As such, no jurisdictional error, much less an error of law, is shown to have been committed by the appellate committee. On the contrary, on appreciation of evidence and considering submissions the appellate committee partly allowed the appeal and considerably reduced the supplementary bill. Under the circumstances, there is no substance in the present petition and the same deserves to be rejected.

5. In the result, the petition fails and the same is rejected at the threshold. However, there shall be no order as to costs.

[M.R.Shah, J.]

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